IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Sales Tax Revision No. 40 of 2002
(Old No. 1445 of 1992)

Commissioner of Sales Tax
U.P. Lucknow. …….. Appellant/Revisionist

Vs.

The Bajpur Co-operative Sugar Factory,
Bajpur (Kashipur) …… Opposite Party

Shri R.C. Arya, learned Standing Counsel for the revisionist.
Shri C.K. Sharma, learned counsel for the opposite party.

Hon'ble Prafulla C. Pant, J.

Heard learned Standing Counsel and learned counsel for the respondent. The revision has been moved under Section 11 (1) of U.P. Sales Tax Act, 1948, and is directed against the judgment and order dated 29.05.1991 passed by Sales Tax Tribunal, Bareilly. This revision was filed way back in the year 1992 and is received by transfer from Allahabad High Court, under Section 35 of U.P. Reorgainstation Act, 2000.

The only question of law involved in this revision is:-, *"Whether on the facts and in the circumstances of the case the Sales Tax Tribunal was legally justified to hold that there was no sale of Gunny bags used in the packing of sugar?"*

The assessment pertains to the year 1986-87, for which year the tax on sugar was an exempted item under Section 4 of U.P. Sales tax Act, 1948. The sugar is always sold in gunny bags as it is packed in gunny bags before it is stored for sale. The assesseee is the manufactures of sugar and was not supposed to sell it in loose without any packing.

Merely on the basis of the fact that the sugar was sold in gunny bags by the manufacture, it cannot be said that the

assessee has sold the gunny bags. There is nothing on the record to establish that there was any direct agreement between the assessee and the purchaser of sugar for sale of gunny bags for the specific amount as consideration. Since no price was paid for the gunny bags, there cannot be said to be sale of gunny bags, as it does not come within the definition of sale, in view of Section 2 (h) of the U.P. Sales Tax Act, 1948.

In view of the above discussions, the revision has not force and the same is dismissed in limine.

(Prafulla C. Pant, J.)

Dt: 07.02.2006
H.Negi